



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

The Honorable Bruce McPherson
California Secretary of State
1500 11th Street
Sacramento, California 95814

Dear Secretary McPherson:

Attached is the final resolution report of the U.S. Election Assistance Commission (EAC) regarding the audit of obligations and expenditures of Help America Vote Act (HAVA), Title I, Section 101 funds by the California Secretary of State through December 31, 2004. The resolution is based upon the information provided by the audit conducted by the Department of the Interior, Office of Inspector General (OIG) on behalf of the EAC.

After careful consideration of all the facts presented, EAC has determined that the State of California must repay \$3,021,114 of the HAVA Section 101 funds that were distributed to the state. Of that amount, \$536,122 must be returned to the U.S. Treasury and \$2,484,992 must be returned to the state election fund, where it will be used to continue to improve the administration of federal elections in California.

EAC identified three methods of resolution regarding questioned costs: 1) Expenditures that were identified as permissible under HAVA, but did not follow appropriate procedures do not have to be repaid; 2) Expenditures that may be permissible under HAVA but lacked adequate documentation must be repaid to the state election fund, which was created in accordance with HAVA section 254(b)(1); and 3) Expenditures that were clearly not permissible under HAVA must be repaid to the U.S. Treasury. In addition to repayment of funds, the EAC will require future reporting to ensure that proper internal controls and procedures have been established.

California shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the Commission may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The Commission will render a decision on the appeal no later than 60 days following the receipt of the appeal. The decision will be final and binding. A letter detailing the repayment process to the U.S. Treasury will be sent by EAC within 5 business days following the end of the appeal process.

We appreciate your cooperation in this matter as we work together to ensure that HAVA funds are used in accordance with the law.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Wilkey", written over the printed name.

Thomas R. Wilkey
Executive Director



U.S. ELECTION ASSISTANCE COMMISSION
1225 New York Ave. NW – Suite 1100
Washington, DC 20005

California Audit Final Resolution Report

Issued May 12, 2006

Background

The U.S. Election Assistance Commission (EAC) is an independent, bipartisan agency created by Help of America Vote Act of 2002 (HAVA). It assists and guides state and local election administrators in improving the administration of elections for federal office. EAC provides assistance by dispersing federal funds to states to implement HAVA requirements, adopting the voluntary voting system guidelines, and serving as a national clearinghouse and resource of information regarding election administration. EAC is also responsible for the accreditation of testing laboratories and the certification, decertification, and recertification of voting systems.

In addition to EAC's role in distributing HAVA funds, the agency is responsible for monitoring the fiscally responsible use of HAVA funding by the states. The EAC seeks to ensure funds distributed under HAVA are being utilized for the purposes mandated by HAVA to ultimately improve the administration of federal elections. To fulfill this responsibility, the EAC conducts periodic fiscal audits of state HAVA fund expenditures and issues final resolutions regarding proper use.

Audit History

In Fiscal Year 2003, the U.S. General Services Administration (GSA) disbursed \$27,340,830 to the State of California, pursuant to HAVA, Title I, Section 101, for activities to improve the administration of federal elections. The California Bureau of State Audits (BSA) conducted an audit of HAVA Section 101 funds expended or obligated by the California Secretary of State's Office (SOS) as of June 30, 2004.¹ The audit was conducted to determine whether the SOS properly used HAVA funds. The audit also evaluated SOS policies and procedures for administering HAVA funds. BSA's audit found problems with the administration of HAVA funds by the SOS and potentially misspent HAVA funds. The BSA audit covered about 25 percent of HAVA Section 101 expenditures totaling approximately \$3.4 million as of June 30, 2004.

Following these findings, the EAC voted to conduct a more comprehensive audit of HAVA funds by the Commission. The EAC contracted with the Department of the Interior,

¹ *Office of the Secretary of State: Clear and Appropriate Direction Is Lacking in Its Implementation of the Federal Help America Vote Act*, issued December 2004 (Report No. 2004-139).

Office of Inspector General (OIG), to audit more expenditures than previously covered. The audit covered all HAVA Title I, Section 101 funds expended or obligated by the State of California, Office of the Secretary of State, as of December 31, 2004 and also reviewed obligations made prior to but paid after December 31, 2004 for a total of \$8,733,552 in reviewed expenditures. In total, the OIG questioned \$3,860,361 in HAVA expenditures, consisting of \$777,502 in cost exceptions and \$3,082,859 in unsupported costs.

After conducting field work during June and July 2005, the OIG issued a final audit report on October 11, 2005². The SOS provided comments to the OIG on November 30, 2005. As the awarding agency, the EAC must determine the resolution to the questioned costs. The audit was provided by the OIG to EAC for resolution on December 19, 2005 for a response to be submitted to OIG by March 3, 2006. The EAC requested an extension for the response due to the volume of audit materials that needed to be reviewed.

Resolution Activities

The EAC Programs and Services staff evaluated the working papers provided by the BSA to propose a resolution to the audit conducted by the OIG on behalf of the EAC. The resolution of the questioned costs identified in the audit took considerable time to craft due to the large volume of material contained in the working papers that needed review. In resolving these questioned costs, we considered not only whether the state followed proper procurement procedures, but also whether the expenditures actually served to further the goals of HAVA.

EAC reviewed the OIG's questioned costs and identified three methods of resolution regarding these costs: 1) Expenditures that were identified as permissible under HAVA, but did not follow appropriate procedures do not have to be repaid; 2) Expenditures that may have been permissible under HAVA but lacked adequate documentation must be repaid to the state election fund, which was created in accordance with HAVA section 254(b)(1); and 3) Expenditures that were clearly not permissible under HAVA must be repaid to the U.S. Treasury.

In addition to repayment of funds, the EAC will require future reporting to ensure that proper internal controls and procedures have been established.

Audit Resolution

The following categories explain in detail the questioned costs outlined in the final audit report and how the EAC reached its final audit resolution regarding the questioned costs identified by the OIG. A list of abbreviations and a glossary of terms can be found in Attachment 1.

² *Audit of Expenditures by the California Secretary of State's Office Under the Help America Vote Act of 2002*, Report No.W-RR-OIG-0005-2005.

Consultant Services (Cost exceptions):

We agree with the OIG findings that the SOS inappropriately modified purchase orders to extend contracts for a law firm in order to avoid competitively procuring other services needed by the SOS and to circumvent cost limitations placed on the contract. It is apparent from internal state reviews of this contract that the work could have been performed by California state attorneys. The law firm, Renne & Holtzman Public Law Group, LLP, charged in excess of the hours per week allowed by the contract and the SOS office still paid these invoices, despite being aware of the issue. The law firm provided advice on dealing with the media in matters unrelated to HAVA. The state must repay the U.S. Treasury \$42,256.00 in excess attorneys' fees.

The \$1,050.00 paid in attorney's fees for non-HAVA related speech writing for the SOS must be repaid to the U.S. Treasury.

Consultant Services (Unsupported Costs):

We believe the SOS did not abide by its own policy to follow the state's competitive bidding requirements, improperly applied a DGS exemption to the competitive bidding process, and improperly split purchase orders to avoid additional state procurement requirements. Although the state did not follow proper procedure, the documentation available does suggest that some of the expenses incurred were permissible uses of HAVA funds. The contracts with R&G Associates LLC and International Network Consulting Inc, totaling \$757,134.00, were improperly procured but the documentation makes it apparent that the costs were permissible under HAVA and the work was done as part of the state's efforts to meet the HAVA Title III requirements. These costs are reinstated and do not have to be repaid.

After an extensive review of all the materials provided by the auditors, we have determined that \$915,394.00 must be repaid to the state election fund. This amount represents all the additional contracts in this category that potentially were permissible uses of HAVA funds, but had insufficient documentation to show they were permissible under HAVA. Many of the voter outreach efforts had vague statements of work and invoices that made it impossible to determine if the programs were education activities allowed by HAVA or other types of voter outreach efforts not covered under HAVA.

Personal Services Costs (Cost Exceptions):

The state did not disagree with the OIG's findings that HAVA funds were incorrectly charged for salaries and benefits of three employees whose time was not allocable to HAVA programs. The state must repay \$88,421.00 to the U.S. Treasury for expenditures not permissible under HAVA.

Personal Services Costs (Unsupported Costs):

The state agrees that proper documentation does not exist to confirm how much time the 22 employees cited in the audit findings actually spent working on HAVA related activities. The state must repay \$937,269.00 to the state election fund, as HAVA programs benefited from the

work but without proper documentation there is no way to properly allocate a percentage of the costs to HAVA funds.

Printing, Postage, and Shipping (Cost Exceptions):

Using HAVA funds for the state to mail absentee ballot applications to voters appears to be an inappropriate use of HAVA funds because it duplicated county efforts. Also, purely promotional items are not allowable expenses under federal cost principles. The state must repay the U.S. Treasury \$308,388.00 that was inappropriately charged to HAVA funds.

Printing, Postage, and Shipping (Unsupported Costs):

The state did not follow proper procurement procedures for printing services but poll worker training is specified as an allowable cost under HAVA Section 101. The items were clearly used for this HAVA purpose and those costs are reinstated. The state does not have to repay the \$9,187.00 used for printing poll worker brochures. The state must repay the state election fund \$74.00 charged without detailed invoices.

County Grants (Cost Exceptions):

Capitalized equipment purchases made by counties might be an allowable use of HAVA funds if the purchases had EAC approval. No approval was given by the EAC for these purchases and the EAC does not ordinarily waive its right to approve capitalized equipment purchases. The state has requested retroactive approval from the EAC for some of these purchases. The EAC has given conditional approval to some items included in this category but it is not clear from the documentation provided how much of the equipment is allocable to HAVA programs (See Attachment 2). Unless the SOS can provide documentation within the 30 day appeal period showing that the equipment purchased is allocable to HAVA funds and was procured at a reasonable price, the state must repay \$68,824.00 to the state election fund.

Promotional items and memorabilia are specifically prohibited in OMB Circular A-87. The state must repay \$77.00 used for these purposes to the U.S. Treasury.

Administrative Indirect Costs (Unsupported Costs):

Although the SOS did submit an Indirect Cost Proposal (ICP) to the EAC in May 2005, the audit covered expenditures and obligations through December 31, 2004. The EAC currently has a contract with KPMG to review ICPs submitted by the states. KPMG has requested additional information from the SOS in order to finalize the review of the ICP submitted by California. The SOS has only recently provided the additional documentation needed for KPMG to complete the review. Currently there is no approved indirect cost rate applicable to California HAVA funds and the \$108,077.00 must be repaid to the state election fund. After a final indirect cost rate is negotiated and approved by the EAC, the SOS may retroactively charge the approved rate to HAVA funds.

Interagency Costs (Unsupported Costs):

Although contracts provide detail about specific services to be provided, these cannot be viewed as a replacement for properly documented invoices. There is insufficient proof that the work performed meets the requirements of the contract due to a lack of detailed invoices. In addition, even if proper invoices had been submitted, the contracts do not appear to be permissible expenses under HAVA (such as the interagency agreement with the California Senate Rules Committee for “strategic communications”). The state must repay \$25,616.00 to the U.S. Treasury for these expenses which were unrelated to the implementation of HAVA.

Office Equipment (Unsupported Costs):

Although the SOS did not obtain multiple bids for the 6 laptops purchased using HAVA funds, it appears that the laptops purchased were only available from one vendor (Dell) at the time of purchase and negated the need to research additional quotes. The purchase of new laptops was necessary because the previous laptops were being taken out of service by the state due to age. The Voter Protection and Fraud Investigations Unit appears to be responsible for monitoring compliance with accessibility to polling places and investigating administrative complaints filed under HAVA Section 402. Because these laptops are used solely for the Voter Protection and Fraud Investigations Unit, the cost of \$6,802.00, representing 50% of the total cost, is allowable under HAVA. Charging only 50% of the cost of the laptops to HAVA funds indicates that the state allocated only the amount of the laptop costs that would be used for HAVA related purposes. These costs are reinstated and do not need to be repaid.

The \$487 in telephone charges without sufficient documentation must be repaid to the U.S. Treasury.

Travel Costs (Cost Exceptions):

We were not able to locate a signed invoice approving these costs. The state must repay \$294.00 to the state election fund as they did not maintain adequate documentation to prove it was a permissible HAVA cost.

Other (Cost Exceptions):

The SOS agreed with the audit findings that the purchase price of \$15 for a frame is not HAVA related. The state must repay \$15 to the U.S. Treasury.

Other (Unsupported Costs):

No legible invoices were found to assert the SOS claim that \$425 was a HAVA related purchase for paper for the voter outreach project. In addition, the voter outreach project is not clearly defined and there is not sufficient documentation to prove the program is permissible under HAVA. The state must repay \$425 to the state election fund.

County Grants (Cost Exceptions):

This second category of county grants includes expenditures that were obligated prior to but paid after December 31, 2004. Capitalized equipment purchases made by counties might be an allowable use of HAVA funds if the purchases had EAC approval. No approval was given by the EAC for these purchases and the EAC does not ordinarily waive its right to approve capitalized equipment purchases. The state has requested retroactive approval from the EAC for some of these purchases. The EAC has given conditional approval to some items included in this category but it is not clear from the documentation provided how much of the equipment is allocable to HAVA programs (See Attachment 2). Unless the SOS can provide documentation within the 30 day appeal period showing that the equipment purchased is allocable to HAVA funds and was procured at a reasonable price, the state must repay \$34,707.00 to the state election fund.

Promotional items are specifically prohibited in OMB Circular A-87. The state did not disagree with this finding and provided no indication the materials were used for voter education purposes, which would be a permissible expense under HAVA. Therefore, the state must repay \$69,812.00 used for promotional items to the U.S. Treasury.

Consultant Services (Cost Exceptions):

This second category of consultant services cost exceptions includes expenditures that were obligated prior to but paid after December 31, 2004. Although the SOS had compelling reasons to order an evaluation of internal controls and recommendations for improving the management of HAVA funds and EAC has the authority to approve these as direct costs, the EAC does not approve applying this as a direct cost to HAVA funds. The state must repay \$163,658.00 in audit costs to the state election fund.

Consultant Services (Unsupported Costs):

This second category of consultant services unsupported costs includes expenditures that were obligated prior to but paid after December 31, 2004. The contracts with R&G Associates LLC and Natoma Technologies Inc, totaling expenditures of \$66,123.00 during this period, were improperly procured but the documentation makes it clear that the costs were permissible under HAVA and the work was done as part of the state's efforts to meet the HAVA Title III requirements. These costs are reinstated and need not be repaid.

After an extensive review of all the materials provided by the auditors, we have determined that \$256,270.00 must be repaid to the state election fund. This amount represents the additional contracts in this category that potentially were permissible uses of HAVA funds, but had insufficient documentation to show they were permissible under HAVA.

Final Management Determination

After reviewing the OIG audit, the EAC determines that the State of California must repay a total of \$3,021,114.00. Of this total repayment amount, \$2,484,992.00 must be repaid to

the state election fund and \$536,122.00 must be repaid to the U.S. Treasury. Repayment cannot be funded by the state's five percent match for requirements payments or the state's maintenance of effort funding. The EAC requires a certification by the state budget office verifying repayment has been made to the state election fund, including any supporting documentation.

The first chart below is a summary of the total repayment required for each cost category.

Cost Category	Amount Reviewed	Questioned Costs		Total Repayment Amounts
		Cost Exceptions	Unsupported Costs	
Consultant Services	\$2,429,684.00	\$43,306.00	\$1,672,529.00	\$958,700.00
Personal Services Contracts	\$1,173,596.00	\$88,421.00	\$937,269.00	\$1,025,690.00
Printing, Postage, and Shipping	\$866,549.00	\$308,388.00	\$9,261.00	\$308,462.00
County Grants	\$230,041.00	\$68,901.00		\$68,901.00
Administrative Indirect Costs	\$108,077.00		\$108,077.00	\$108,077.00
Interagency Costs	\$103,781.00		\$25,616.00	\$25,616.00
Office Equipment	\$28,081.00		\$7,289.00	\$487.00
Travel	\$18,068.00	\$294.00		\$294.00
Other	\$19,952.00	\$15.00	\$425.00	\$440.00
County Grants	\$3,009,395.00	\$104,519.00		\$104,519.00
Consultant Services	\$746,328.00	\$163,658.00	\$322,393.00	\$419,928.00
Total	\$8,733,552.00	\$777,502.00	\$3,082,859.00	\$3,021,114.00

The second chart shows a breakdown of the total repayment between the state election fund and the federal government.

Cost Category	Total Repayment Amounts	Repayment Details	
		Election Fund	Federal Government
Consultant Services	\$958,700.00	\$915,394.00	\$43,306.00
Personal Services Contracts	\$1,025,690.00	\$937,269.00	\$88,421.00
Printing, Postage, and Shipping	\$308,462.00	\$74.00	\$308,388.00
County Grants	\$68,901.00	\$68,824.00	\$77.00
Administrative Indirect Costs	\$108,077.00	\$108,077.00	
Interagency Costs	\$25,616.00		\$25,616.00
Office Equipment	\$487.00		\$487.00
Travel	\$294.00	\$294.00	
Other	\$440.00	\$425.00	\$15.00
County Grants	\$104,519.00	\$34,707.00	\$69,812.00
Consultant Services	\$419,928.00	\$419,928.00	
Total	\$3,021,114.00	\$2,484,992.00	\$536,122.00

In addition to repayment of funds, the SOS must provide a certification to the EAC within 30 days that details which of the controls recommended in both the state and federal audits have already been established and a timeline for implementing the remaining controls.

The state must submit quarterly expense reports detailing expenditure of HAVA 101 funds with appropriate documentation so the EAC may monitor the progress being made in the state to implement appropriate internal controls and to follow appropriate procurement procedures. Quarterly reports will be required for one year. The EAC reserves the right to require additional quarterly reports until the EAC deems that HAVA funds are consistently being used in an appropriate manner in compliance with HAVA and applicable rules and regulations. This documentation must include but not be limited to a summary of expenses incurred during the quarter; new contracts that obligate HAVA funds; invoices submitted for payment; timesheets for employees that are charged to HAVA funds; and requests for proposals (RFPs) released for HAVA related projects.

The first report must cover the first two quarters of 2006 and be submitted by July 31, 2006. All subsequent reports must be submitted within 1 month of the close of the reporting period. The following is the reporting schedule determined by the EAC:

Coverage Dates	Report Submittal Date
January 1, 2006 to June 30, 2006	Monday, July 31, 2006
July 1, 2006 to September 30, 2006	Tuesday, October 31, 2006
October 1, 2006 to December 31, 2006	Wednesday, January 31, 2007
January 1, 2007 to March 31, 2007	Monday, April 30, 2007

A letter detailing the repayment process to the U.S. Treasury will be sent by EAC within 5 business days following the end of the appeal process. California shall have 30 days to appeal EAC's management decision. The appeal must be made in writing to the Chairman of the EAC. Within 30 days of receiving the appeal, the Commission may hold a hearing to consider the appeal, take evidence or testimony related to the appeal, and render a decision on the appeal, if appropriate at that time. The Commission will render a decision on the appeal no later than 60 days following the receipt of the appeal. The decision will be final and binding.

California Audit Final Resolution Report

Attachment 1

Abbreviations:

BSA.....	Bureau of State Audits
CMAS.....	California Multiple Award Schedule
DGS.....	California Department of General Services
EAC.....	U.S. Election Assistance Commission
GSA.....	General Services Administration
HAVA.....	Help America Vote Act of 2002
IT.....	Information Technology
SOS	Office of the Secretary of State
OIG	Office of Inspector General
OMB	Office of Management and Budget
State.....	State of California

Glossary:

Capitalized Equipment

Capitalized equipment is an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. The Office's capitalization level is \$5,000.

Indirect Costs

Indirect costs are those incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective. Indirect costs are normally charged to federal awards by the use of an indirect cost rate. Typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, and the costs of operating and maintaining facilities.

Indirect Cost Rate

An indirect cost rate is the ratio (expressed as a percentage) of the indirect costs to a direct cost base (normally consisting of either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures).

Indirect Cost Rate Proposal

An indirect cost rate proposal is the documentation prepared by a governmental unit to substantiate its request for the establishment of an indirect cost rate.

Management

The Commission official to whom an audit report, or the OIG memorandum which transmits an audit report, is addressed.

Obligations

Obligations are the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

Questioned Cost

A cost that is questioned by the OIG or another audit organization because of an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; a finding that, at the time of the audit, the cost was not supported by adequate documentation; or a finding that the expenditure of funds for the intended purpose was unnecessary or unreasonable.

Reinstated Cost

A cost questioned by auditors that management, in a management decision, has agreed should be charged to the Government and is, therefore, not owed by the audited entity.

Resolution

The process of reaching a management decision or, in the case of external audits, resolution means responding to audit recommendations within established time frames.

Unsupported Cost

A cost that is questioned by the auditor because, at the time of the audit, such cost was not supported by adequate documentation.

California Audit Final Resolution Report

Attachment 2



U.S. ELECTION ASSISTANCE COMMISSION
1225 NEW YORK AVENUE, N.W., SUITE 1100
WASHINGTON, D.C. 20005

January 29, 2006

Mr. Chris Reynolds
HAVA Coordinator
California Secretary of State's Office
1500 11th Street
Sacramento, CA 95814

Via U.S. Mail & Electronic Mail
creynolds@ss.ca.gov

RE: Request for guidance on the use of Help America Vote Act (HAVA) funds

Dear Mr. Reynolds:

Thank you for your letter of December 19, 2005 asking various questions regarding the use of HAVA funds. We received a similar request from Sacramento County seeking much of the same information. We have considered these requests together to avoid any confusion or conflict in the responses to these requests.

As you can imagine, several of your questions required research and thus resulted in the delay of this response. Further, before answering the specific questions at hand, I have included the following background information on the sources and uses of HAVA funds. I will refer to these forms of funding throughout the discussion of the specific requests that you have made.

HAVA Funds

There are three sources of funding provided by HAVA for use to improve the administration of federal elections and to meet the requirements of Title III of HAVA (specifically to implement provisional voting; improve voting technology; develop and implement a voter registration database; provide information to voters; and, verify and identify voters according to the procedures set forth in HAVA). Those sources are Section 101, Section 102 and Section 251 funds. The funds received by a state under Section 101 can be used for the following purposes:

- A. Complying with the requirements under title III.
- B. Improving the administration of elections for Federal office.
- C. Educating voters concerning voting procedures, voting rights, and voting technology.
- D. Training election officials, poll workers, and election volunteers.
- E. Developing the State plan for requirements payments to be submitted under part 1 of subtitle D of title II.

- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods for casting and counting votes.
- G. Improving the accessibility and quantity of polling places, including providing physical access for individuals with disabilities, providing non-visual access for individuals with visual impairments, and providing assistance to Native Americans, Alaska Native citizens, and to individuals with limited proficiency in the English language.
- H. Establishing toll-free telephone hotlines that voters may use to report possible voting fraud and voting rights violations, to obtain general election information, and to access detailed automated information on their own voter registration status, specific polling place locations, and other relevant information.

Section 102 funds can be used ONLY for the purposes of replacing punch card and lever voting systems with voting systems that comply with Section 301(a) of HAVA. Lastly, Section 251 funds can be used to implement any of the Title III requirements and to improve the administration of elections for federal office after one of two conditions has been met: (1) the state has met the requirements of Title III; or (2) the state notifies EAC of its intention to use an amount not to exceed the amount of the minimum payment that the state either did or could have received under the Section 252 formula for that purpose. The uses of Section 251 funds must also be accounted for in the state's plan as originally submitted or later amended.

Office of Management and Budget (OMB) Circular A-87 also makes it clear that all costs associated with the funding program must be both allowable and allocable to the program and that all costs must be reasonable.

Your letter asked questions concerning the use of HAVA funds in five situations or scenarios. Each is addressed in turn, below.

1. **Cellular Phones**

In this section of the letter, you identified certain situations in which equipment, specifically cellular telephones, would be purchased by a County to assist in administering elections and maintaining contact with polling places on election day. In keeping with Circular A-87, there are three questions to be considered. First, is the expense allowable. Second, is the expense allocable to this federal program. Third, is the expense reasonable.

According to Circular A-87, a cost is allowable if it is necessary for the proper and efficient performance and administration of the federally sponsored program. Thus, the state would have to determine that county use of cellular phones is necessary to monitor polling places during federal elections. It seems appropriate to us that there is a need for monitoring during federal elections. In addition, the cognizant agency for the funding program, in this case EAC, has the authority to pre-approve or waive the right to pre-

approve the purchase of any capital equipment (generally equipment with a unit cost of \$5,000 or more) with grant funds. (See Attachment B of A-87, Section 15. Equipment and other capital expenditures). EAC will acknowledge and use the state's definition of capitalized equipment for purposes of requiring pre-approval of expenditure. Thus, if the state's definition sets forth a dollar amount lower than \$5,000, then the state's amount will serve as the threshold for requiring pre-approval. Regardless, it is highly unlikely that the unit costs of cellular telephones would rise to the level of capitalized equipment, but rather would be considered supplies. (See Attachment B, Section 26. Materials and Supplies.) Thus, the answer to the first question is that the expense is likely allowable, pending determination of the state's threshold for capitalized equipment.

The second requirement of Circular A-87 is that the expense be allocable to the program. Based upon the explanation that you have provided, these cellular telephones would be used exclusively by the election division of the county for election purposes. If for whatever reason this is not true and these phones would be used for any purpose other than those permitted by HAVA, the County can charge only a portion equal to the percentage of use for HAVA related purposes to the HAVA grant. This can be accomplished by either using only that percentage of HAVA fund per unit cost or by seeking reimbursement from the other departments within the county for their portion of the usage. Because this expense is not directly related to meeting any of the Title III requirements, it is allocable only to Section 101 funds and Section 251 funds pursuant to the provisions of Section 251(b) that allow for the use of Title II funds for the improvement of the administration of elections for federal office only up to the minimum payment amount.

Last, Circular A-87 requires that the expense be reasonable. It is unclear from your letter how frequently these cellular telephones would be used. There must be some assessment as to whether the costs of a monthly plan is justified based upon the frequency of use. For instance, it may be more reasonable to purchase prepaid cellular phones rather than to purchase phones with monthly plans that will only be used infrequently or periodically.

While pre-approval for purchase of these items is not required, EAC would encourage you and the counties in California to consider the cost principles set forth in Circular A-87 prior to purchasing cellular telephones with HAVA funds. This is the type of analysis that EAC will conduct in reviewing expenditures reported by the state and the kind of analysis that EAC auditors will conduct in determining whether to question costs.

2. Forklifts

In this section, you inquired about the use of HAVA funds to purchase forklifts to be used to move and store voting equipment within a warehouse. While this type of equipment is not a purchase that meets one of the Title III requirements, we do believe that this is the type of equipment that would improve the administration of elections for federal office. Thus, we believe that the purchase of a forklift would be both allowable under HAVA and Circular A-87 and allocable to the Section 101 funding program or to the Section 251 funding program up to the minimum payment amount, in keeping with

Section 251(b). The allocability of this type of purchase is subject to the requirement that the state and county allocate only that portion of the forklift's cost that corresponds to the percentage of use of the forklift that the election division of the county will have.

The third element of the OMB Circular A-87 analysis, whether the cost is reasonable, has not been made clear to us. No information was provided as to whether a cost benefit analysis has been conducted to determine whether the purchase of such equipment is both necessary and more financially prudent than leasing the equipment as needed to prepare for elections. Leasing equipment is considered an allowable expense under OMB Circular A-87, according to the limitations and conditions of Attachment B, 37. Rental Costs of Buildings and Materials.

EAC cannot pre-approve the expenditure of HAVA funds on one or more forklifts for counties without further information regarding the reasonableness of this purchase versus leasing the same type of equipment.

3. Motorized Vehicles

In your letter, you requested guidance on whether EAC would pre-approve the purchase of motorized vehicles for use in voter outreach efforts. Voter education is specifically mentioned as an allowable use of Section 101 funds in Section 101(b)(1)(C) of HAVA and would generally be considered an activity that would improve the administration of elections for federal office. Based on the information provided in your letter, counties would anticipate using these vehicles exclusively for outreach purposes.

It is the reasonableness of this expense that remains in question. There must be some cost benefit analysis conducted considering the frequency of use and cost of purchasing a vehicle in comparison with the cost of leasing a car as needed for outreach and education efforts. Without more information regarding the reasonableness of this expense, EAC cannot pre-approve the purchase of motorized vehicles using HAVA funds.

4. Absentee Voting Equipment

In this portion of your letter, you inquire about the use of HAVA funds to purchase absentee voting equipment. In reviewing the definition of voting system in Section 301(b) of HAVA, it is clear that the definition includes equipment used to administer absentee voting. California and its counties may use funds distributed under Section 101 or Section 251 to purchase voting equipment used to conduct absentee voting as long as that equipment meets the requirements of Section 301(a) of HAVA.

5. Discretionary use of funds

Finally, you inquire as to whether the restrictions of Section 251 will be lifted on a by-county basis when a county meets the requirements of Title III of HAVA. The plain language of Section 251(b)(2) of HAVA requires that the state have implemented the requirements of Title III prior to using more than what the state could have obtained as a

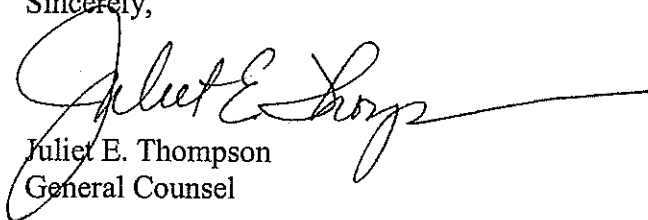
Mr. Chris Reynolds

Page 5 of 5

minimum payment for activities to improve the administration of elections for federal office. Thus, the Section 251 restrictions will not be lifted on a county-by-county basis.

Thank you for your efforts to implement HAVA's election reforms. We will await additional information before making a determination on the reasonableness of using HAVA funds to purchase forklifts and motorized vehicles. In the meantime, if you have any additional questions regarding the use of HAVA funds, please feel free to contact me.

Sincerely,



Juliet E. Thompson
General Counsel

cc:	Paul DeGregorio, Chairman	Ray Martinez, Vice Chairman
	Donetta Davidson, Commissioner	Gracia Hillman, Commissioner
	Tom Wilkey, Executive Director	Peggy Sims, Election Research Specialist